

GEORGE D. JACKSON

IBLA 75-259

Decided May 16, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, requiring appellant to pay appraised value of \$13,500 for Small Tract A-060178.

Affirmed.

1. Administrative Practice -- Federal Employees and Officers: Authority to Bind Government -- Appraisals -- Small Tract Act: Generally -- Small Tract Act: Appraisals

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

2. Appraisals -- Small Tract Act: Appraisals

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

APPEARANCES: George D. Jackson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

George D. Jackson has appealed from a decision, dated October 25, 1974, of the Alaska State Office, Bureau of Land

Management (BLM), requiring him to submit as the purchase price the appraised fair market value of \$13,500 for an island in Finger Lake surveyed as Lot 5 of sec. 34, T. 18 N., R. 1 E., S.M., comprising 0.61 acre. The tract had been classified for direct sale to appellant under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682(a) - 682(e) (1970). Appellant maintains that the \$13,500 appraised valuation is grossly overstated.

The history of this case covers more than a decade. On September 26, 1963, appellant filed a small tract application and petition for classification as a small tract an island in Finger Lake in the aforesaid section, township and range. Since the island was omitted from the original survey, appellant filed an application on December 10, 1963, for survey as required. The survey of the island was accepted on November 8, 1965. The island was designated and described as Lot 5 of section 34. On October 13, 1967, the District Manager approved the recommendations that the land be classified under the Small Tract Act and for direct sale to the applicant at the then appraised fair market value of \$6,250. Accordingly, in a decision dated November 24, 1967, the Alaska State Office, BLM, informed appellant that the land had been surveyed and classified for direct sale to him at the then current fair market value of \$6,250. It allowed him 60 days from receipt of the decision within which to submit the \$6,250. On December 14, 1967, appellant appealed to the Director, Bureau of Land Management, contending that the purchase price of \$6,250 was a grossly overstated value.

On February 26, 1968, the Acting Chief, Office of Appeals and Hearings, Bureau of Land Management, affirmed the decision appealed from on the grounds that an appraisal will not be disturbed in the absence of positive and substantial evidence that it is in error and the applicant disputing the appraisal has the burden of establishing that it is in error, which appellant had not done. On March 25, 1968, Jackson filed an appeal to the Secretary of the Interior from the Bureau's decision.

The Deputy Assistant Secretary of the Interior in a letter to Jackson, dated July 22, 1969, stated that the case was being remanded to the Director, Bureau of Land Management, for a new appraisal at such time as the lands become available for disposal. The letter explained that Public Land Order (PLO) 4582 of January 17, 1969, published in the Federal Register on January 19, 1969 (34 F.R. 1025), withdrew all public lands in Alaska from all forms of appropriation and disposition under the public land laws, with exceptions not pertinent, and the lands were reserved under the jurisdiction of the Secretary of the Interior for the protection of the rights

of the native Aleuts, Eskimos and Indians of Alaska. The letter went on to state that the case involves a land title transfer pending on the effective date of the order and action thereon must be suspended until April 2, 1971, as provided in the order. The letter pointed out that in view thereof, the question of the correctness of the BLM appraisal of June 14, 1967, was moot since the Department is charged with the responsibility of obtaining the fair market value of the land in issue as of the time approximating the date of issuance of the title document. It also stated that since the transfer could not occur prior to April 2, 1971, the correctness of the 1967 BLM appraisal was academic.

Subsequently, the suspension date of April 2, 1971, was successively extended by PLO 4962 (35 F.R. 18874, December 11, 1970) and PLO 5081 (36 F.R. 12017, June 24, 1971). With the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. §§ 1601-1624 (Supp. II, 1972), PLO 4582, as amended, was revoked and the land became subject to disposal.

According to the record, thereafter when the service of an appraiser became available and weather permitted, an on-the-ground examination of the tract was made. The appraiser's report of July 26, 1973, setting the fair market value of \$13,500 for the tract was approved on August 14, 1973, by the Chief, Division of Appraisal, Bureau of Land Management. Pertinent portions of the report are attached hereto as Appendix A.

By letter dated March 7, 1974, Jackson was given informal notice that the tract had been reappraised and that the current fair market value of the tract is \$13,500. He was informed that he would receive in September 1974 a notice requiring payment of the purchase price of \$13,500 to be submitted within 60 days. He was also informed that a notice requiring payment of the purchase price has a mandatory time limit for the submission of the money which cannot be extended. In view thereof, it explained, he was being informed of the appraised value in advance of formal notice of payment to allow him more time to arrange for the purchase money.

The Alaska State Office, BLM, by decision of October 25, 1974, notified Jackson as follows. The land in his application to purchase has been classified for direct sale. Land so classified must be sold for not less than the fair market value. 43 CFR 2731.5(a). The appraised value of the land is \$13,500. The applicant was allowed 60 days from the date of receipt of the decision within which to submit the purchase price of \$13,500. 43 CFR 2913.3(c). If not received within the specified period,

applicant's case would be closed without further notice. In that event, applicant would be allowed 90 days within which to remove his improvements from the land, failing in which the improvements would become the property of the United States. Jackson was also informed of his right of appeal. His appeal from that decision brings the matter before this Board.

[1] In his statement of reasons in support of his appeal, appellant refers to the many years of delays in this matter. This Board in Eugene G. Roguszka, 15 IBLA 1 (1974) and in Glenn T. Norton, 16 IBLA 105 (1974) stated:

It is regrettable that substantial administrative workloads often result in burdensome delays. However, an applicant for public land cannot acquire any right in the land by virtue of administrative delay. Charles Schraier, A-30814 (November 21, 1967), aff'd, Schraier v. Udall, 419 F.2d 663, 667-68 (D.C. Cir. 1969); Joseph J. Miller, A-30681 (May 3, 1967); Jack T. Lofstrom, Leotha Marie Stone, A-29470 (November 15, 1964); Elizabeth Sauer Dreves, A-29292 (July 23, 1963); Kenneth W. Swallow, A-28975, 28976 (August 6, 1962); Richard K. Todd, 68 I.D. 291, 297 (1961), aff'd sub nom. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

The mere filing of a small tract application does not create in the applicant any right or interest in the land. Glenn T. Norton, supra at 107. An applicant for a small tract, as provided in Departmental regulation, is required to pay a purchase price which reflects the current appraised fair market value of the land. 43 CFR 2731.5(a). Thus, it would have been contrary to the stated policy to permit the consummation of a sale in October 1974, based upon values which were determined in 1967, and which do not reflect the true "current" fair market value of the subject land. Eugene G. Roguszka, supra at 9.

We conclude that the determination requiring a new appraisal was correct. Appellant had chosen in 1967 to appeal rather than accept the land at the purchase price offered to him in 1967 by the Alaska State Office and thus had not committed himself to any purchase. Where no contractual agreement exists, the Government may choose to reappraise the subject land should the circumstances indicate that a change in value may have occurred since it made its first offer to sell. Eugene G. Roguszka, supra at 9, and cases cited therein.

[2] Appellant argues that the decision of the Alaska State Office, BLM, dated October 25, 1974, "raised the purchase price to \$13,500, more than double the original overstated value." Then he refers to his 1967 appeal from the purchase price of \$6,250, which he asserts was supported by estimates of several area appraisers who estimated the then value of the island to be from \$625 to \$850. Appellant attached to his more recent statement of reasons for appeal copies of those old appraisal reports.

In any event, since the appraisal reports tendered by appellant are outdated, they may not be considered as reflecting the current fair market value of the subject land as is required.

Appellant has not asserted that the Government's 1973 appraisal report failed to follow Bureau of Land Management standards. Having examined that appraisal report we find it to be in accord with Bureau standards. Where the current fair market value of the land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error. Nick Lambros, 10 IBLA 135, 136 (1973). Accordingly, as there is no evidence that the most recent appraisal is in error, it will not be disturbed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Appellant is allowed 60 days from the date of this decision within which to tender the \$13,500 purchase price, failing in which the case will be closed without further notice. In that event, appellant is allowed an additional 90 days from the date of this decision within which to remove his improvements from the island, failing in which the improvements will become the property of the United States without further notice.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

APPENDIX A

The pertinent portions of the Bureau's 1973 appraisal report reads: "The subject Lot 5 is an island in the Section 34 portion of Finger Lake. * * * The subject island is located about halfway between Wasilla and Palmer in the Matanuska Valley. * * * Finger Lake is located one mile northwest of the intersection of the new Fairbanks Highway and the Palmer-Wasilla Highway. This lake is about two miles long and one-eighth to one-half mile wide. * * * Several lakes west of Palmer are popular recreation and second home locations for Anchorage residents. * * * Local employment is varied with some full-time residents of the area commuting daily to Anchorage. * * * The subject .61 acre island is located near the northeast end of the lake about 300 feet from a point of land jutting southerly from the north shore on which a campground is located. The island is well-drained with a crisp gravel lake bed shoreline, all of which is usable for boat or float plane docking. * * *"

"Three approaches have been considered in making this appraisal, however, two of the conventional approaches were not considered to be applicable. Since no buildings are to be valued as part of this appraisal, the cost approach is inappropriate. Similarly, the income approach to value is not applicable because land like the subject land is usually not purchased or sold based on its income producing capability. The market data approach is the most applicable in estimating the value of the subject. In this approach, consideration of and adjustment for differences between the sold islands and the subject will be made. * * * An adequate number of recent small island transactions is available to provide an accurate indication of the value of subject island. Although no island sales on Finger Lake were found, the transactions discussed are on lakes in the general area with similar characteristics. Because of the scarcity of these unique properties, buyers desiring such close-in islands would consider several alternative lakes. Informed persons with whom this point was discussed indicated that an island in Finger Lake would be competitive with islands in its chain of lakes as well as the group of lakes surrounding Big Lake. The locational relationship of the two lakes is such that Big Lake is closer to Anchorage by air, but Finger Lake is closer by highway."

The appraisal report contains a narrative analysis of each of five sales. These were condensed into a:

"Comparison Table

Sale	Size	Site	Size & Loc.	& Site	Overall No.	Date (Acres)	Price	* Time	Front	Util.	Char.
Adjust.	1	6/73	.87	\$15,000	0 0 - + -						
2	3/70	.83	13,500	+ - - 0 0							
3	8/72	2.22	10,600	+ - + 0 +							
4	3/71	.18	8,200	+ + - 0 +							
5	7/71	.05	8,000	+ + - + +							

* The price shown in this column is the net sale price after the value contributed by buildings or other assets (other than land) is subtracted from the total purchase price.

Symbol	Explanation
+	Subject is superior to the sale.
0	Subject is equal to the sale.
-	Subject is inferior to the sale.

Correlation:

Five sales have been analyzed and consideration has been given to their differences in relation to the subject. Sales Nos. 1 and 3 give good support to the value suggested by Sale No. 2.

Conclusion

The value of the subject .61 acre island is estimated at \$13,500."

